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Honorable _____

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, ON)
BEHALF OF THE NATIONAL OCEANIC)
AND ATMOSPHERIC ADMINISTRATION)
AND THE UNITED STATES)
DEPARTMENT OF THE INTERIOR;)
STATE OF WASHINGTON THROUGH)
THE WASHINGTON DEPARTMENT OF)
ECOLOGY; PUYALLUP TRIBE OF)
INDIANS; MUCKLESHOOT INDIAN)
TRIBE,)
Plaintiffs,)
vs.)
GLACIER NORTHWEST, INC.,)
Defendant.)

CIVIL NO.
CONSENT DECREE

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I. INTRODUCTION

The United States of America ("United States"), on behalf of the National Oceanic and Atmospheric Administration ("NOAA") and the United States Department of the Interior; the State of Washington (the "State") through the Washington State Department of Ecology; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively, "Plaintiffs"), have filed a complaint in this case against defendant Glacier Northwest, Inc. ("Defendant") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9607; the Model Toxics Control Act (MTCA), chapter 70.105D RCW; Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A). This Consent Decree (the "Decree") addresses the claims asserted in the Complaint against Defendant for Natural Resource Damages (as defined below) in the Commencement Bay Environment (as defined below).

II. RECITALS

15 A. The United States Department of Commerce, acting through NOAA; the United
16 States Department of the Interior; the Washington State Department of Ecology on behalf of the
17 State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe (collectively,
18 the "Trustees" and, individually, a "Trustee"), under the authority of Section 107(f) of CERCLA,
19 42 U.S.C. § 9607(f), Section 1006(b) of OPA, 33 U.S.C. § 2706(b), and 40 C.F.R. Part 300, subpart
20 G, serve as trustees for natural resources for the assessment and recovery of damages for injury to,
21 destruction of, and loss of natural resources under their trusteeship.

22 B. Investigations conducted by the United States Environmental Protection Agency
23 ("EPA"), the Trustees and others have detected hazardous substances in the sediments, soils and
24 groundwater of the Commencement Bay Environment, including but not limited to arsenic,
25 antimony, cadmium, chromium, copper, mercury, nickel, lead, zinc, bis(2-ethylhexyl)-phthalate,
26 hexachlorobenzene, hexachlorobutadiene, polycyclic aromatic hydrocarbons, and polychlorinated
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1 biphenyls. Overall, the Trustees have documented the presence of over 30 hazardous substances in
2 the marine sediments of Commencement Bay's Hylebos Waterway.

3 C. The Trustees began assessing natural resource damages in the Commencement Bay
4 Environment in October 1991 by finding that hazardous substances had been released into the
5 Commencement Bay Environment; that public trust natural resources had likely been injured by the
6 releases; that data sufficient to pursue a natural resource damage assessment were available or could
7 likely be obtained at a reasonable cost; and that, without further action, implemented and planned
8 response actions would not adequately remedy the resource injuries. *See* Preassessment Screen of
9 Natural Resource Damages in the Commencement Bay Environment Due to Activities Taking Place
10 In and About the Commencement Bay/Nearshore Tidelands (CB/NT) Superfund Site (October 29,
11 1991). The Trustees notified representatives of known potentially responsible parties ("PRPs") of
12 their intent to conduct a damage assessment. The Trustees subsequently entered into a Funding and
13 Participation Agreement for Phase 1 of the Commencement Bay-Wide Natural Resource Damage
14 Assessment, dated February 10, 1993, with several of the major PRPs. The Trustees published a
15 report on the results of Phase 1 of the damage assessment process in June 1995. The PRPs did not
16 participate in subsequent stages of the damage assessment, and the Trustees continued the process
17 independently. The Trustees have now completed a series of studies during Phase 2 of the damage
18 assessment, focusing on impacts of contaminants on marine sediments, benthic organisms, flatfish
19 and salmonids. Results of those studies were published in a series of reports, consisting of
20 Commencement Bay Natural Resource Trustees, 1996, Hylebos Waterway Data and Data Analysis
21 Report; Collier, T.K., L.L. Johnson, M.S. Myers, C.M. Stehr, M.M. Krahn, and J.E. Stein, 1998, Fish
22 injury in the Hylebos Waterway in Commencement Bay, Washington; Mary R. Arkoosh, Ed Casillas,
23 Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects of Chemical Contaminants
24 from the Hylebos Waterway on Disease Resistance of Juvenile Salmon; Ed Casillas, Bich-Thuy L.
25 Eberhart, Frank C. Sommers, Tracy K. Collier, Margaret M. Krahn and John E. Stein, 1998, Effects
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1 of Chemical Contaminants from the Hylebos Waterway on Growth of Juvenile Chinook Salmon;
2 and Ed Casillas, Bich-Thuy L. Eberhart, Tracy K. Collier, Margaret M. Krahn and John E. Stein,
3 1998, Exposure of Juvenile Chinook Salmon to Chemical Contaminants Specific to the Hylebos
4 Waterway. The Plaintiffs and Defendant (collectively, the "Parties" and, individually, a "Party")
5 agree that no further natural resource damage assessment is required to effectuate the purposes of
6 this Consent Decree, with respect to Defendant.

7 D. Plaintiffs have filed a complaint (the "Complaint") pursuant to section 107 of
8 CERCLA, 42 U.S.C. § 9607; MTCA, chapter 70.105D RCW; CWA, 33 U.S.C. §§ 1251 et seq.; and
9 OPA, 33 U.S.C. §§ 2701 et seq., seeking recovery from Defendant of damages for injury to,
10 destruction of, and loss of natural resources resulting from releases of hazardous substances into the
11 Commencement Bay Environment, including the costs of assessing the damages.

12 E. Plaintiffs allege in the Complaint that Defendant owns or in the past owned and/or
13 operated real property or facilities, identified by the Trustees as the LONE STAR NORTHWEST
14 site, from which storm water, surface water runoff, wastewater, other process discharges, and/or
15 groundwater have flowed to the Commencement Bay Environment. Plaintiffs also allege that
16 investigations by EPA and others have detected concentrations of hazardous substances in soils,
17 groundwater and/or sediments on or in those properties or facilities. Some of these hazardous
18 substances are found in the sediments of the Commencement Bay Environment.

19 F. Plaintiffs further allege that hazardous substances have been or are being released to
20 the Commencement Bay Environment from properties or facilities owned and/or operated by
21 Defendant through direct discharge, surface water runoff, groundwater and/or seeps, and that those
22 hazardous substances have caused injury to, destruction of and loss of natural resources in the
23 Commencement Bay Environment under Plaintiffs' trusteeship, including fish, shellfish,
24 invertebrates, birds, marine sediments, and resources of cultural significance. Plaintiffs further
25 allege that each of them and the public have suffered the loss of natural resource services (including
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1 ecological services as well as direct and passive human use losses) as a consequence of those
2 injuries.

3 G. Plaintiffs allege that the Defendant is (a) the owner and/or operator of a vessel or a
4 facility; (b) a person who at the time of disposal or release of any hazardous substance owned or
5 operated any facility at which such hazardous substances were disposed of; (c) a person who by
6 contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter
7 for transport for disposal or treatment, of hazardous substances owned or possessed by such person,
8 by any other party or entity, or otherwise generated any hazardous substance disposed of or treated,
9 at any facility or incineration vessel owned or operated by another party or entity and containing such
10 hazardous substances; and/or (d) a person who accepts or accepted any hazardous substances for
11 transport to disposal or treatment facilities, incineration vessels or sites selected by such person from
12 which there is a release or a threatened release of a hazardous substance that causes the incurrence
13 of response costs within the meaning of 42 U.S.C. § 9607 and RCW 70.105D.040.

14 H. Defendant denies all the allegations of the Complaint.

15 I. Plaintiffs allege that although the Trustees have initiated but not yet completed a
16 natural resource damage assessment for the Commencement Bay Environment, the Trustees have
17 developed and analyzed information sufficient to support a settlement that is fair, reasonable and in
18 the public interest.

19 J. To facilitate resolving natural resource damage claims, the Trustees developed a
20 proposed allocation of Hylebos Waterway Natural Resource Damages liability among Hylebos
21 Waterway PRPs solely for settlement purposes. Relying upon the results of the damage-assessment
22 studies, remedial investigations, regulatory standards, and scientific literature, the Trustees first
23 developed an estimate of the amount of injury to natural resources that had occurred as a result of
24 releases of hazardous substances to the Hylebos Waterway. The Trustees quantified the effects of
25 the injuries in terms of the losses of ecological services over affected areas of the waterway and over
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1 time, discounted to the current year. The Trustees used the term discounted ecological service
2 acre-years (DSAYs) to describe both the scale of the injuries, and the amount of habitat restoration
3 they are seeking to compensate for the injuries. For the Hylebos Waterway, the Trustees are seeking
4 to recover from all PRPs funds, property and/or in-kind services needed to generate habitat
5 restoration sufficient to compensate for the loss of 1526.77 DSAYs.

6 K. Plaintiffs assert that hazardous-substance releases to the Hylebos Waterway have
7 become dispersed and commingled to the extent that the effects of one PRP's releases cannot be
8 readily distinguished from another's. Plaintiffs further assert that the circumstances of the Hylebos
9 Waterway contamination make all PRPs who contributed to the contamination jointly and severally
10 liable for all injuries to natural resources that have resulted from the contamination. As a
11 consequence, Plaintiffs assert the right to recover for the loss of all 1526.77 DSAYs from any
12 Hylebos Waterway PRP. Without prejudice to their position, and solely for purposes of facilitating
13 settlement with individual PRPs, the Trustees have developed a proposal for allocating liability for
14 the 1526.77 DSAYs among the PRPs. Independent consultants hired by the Trustees reviewed
15 existing information from the files of EPA, the Washington State Department of Ecology, and local
16 public libraries to allocate liability among the various Hylebos Waterway facilities that contributed
17 to the contamination.
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19 L. To insure that all PRPs had an equal opportunity to be informed of and to offer their
20 views on the Trustees' settlement proposal, in April 2002 the Trustees presented their report on the
21 proposed allocation to the public for notice and comment. The Trustees took comments for 60 days,
22 revised the report based upon the comments received, and made it available to PRPs in final form.
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24 M. The Trustees' report allocated liability for DSAY losses for settlement purposes
25 among the various industrial sites along the Hylebos Waterway. As a result of their allocation
26 process, the Trustees allocated a total of 3.606 DSAYs to the Defendant. The Trustees also allocated
27 a total of \$20,804.24 in damage assessment costs relating to the Hylebos Waterway to the Defendant.
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1 N. The Trustees quantified natural resource damages in their Hylebos Waterway report
2 in terms of DSAYs in order to encourage settling parties to resolve their liability by constructing
3 habitat restoration projects. For parties who prefer settling on a cash-damages basis, the Trustees
4 reviewed data from existing restoration projects and estimated it would cost fifty-two thousand
5 dollars (\$52,000.00) per DSAY if the Trustees themselves constructed the required restoration
6 projects. The cash damages equivalent of the 3.606 DSAYs allocated to Defendant totals
7 \$187,512.00. When combined with the damage assessment costs allocated to the Defendant, the
8 dollar value of the Trustees' claim asserted against Defendant totals \$208,316.24. The Trustees have
9 agreed to settle their natural resource damage claims against Defendant associated with the
10 Commencement Bay Environment for cash payments totaling \$208,316.24 in natural resource
11 damages and damage assessment costs. Defendant has agreed to pay the Trustees the identified sum
12 in return for the Trustees' covenants not to sue Defendant for Natural Resource Damages as provided
13 below in Paragraph 16.

15 O. Defendant does not admit any liability to Plaintiffs arising out of the transactions or
16 occurrences alleged in the Complaint, or agree with the theories of liability articulated in the
17 preceding recitals.

18 The Court by entering this Decree finds that this Decree has been negotiated by the Parties
19 in good faith; that settlement of this matter will avoid prolonged and complicated litigation between
20 the Parties; and that this Decree is fair, reasonable, and in the public interest.

21 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED,
22 AND DECREED:

24 III. JURISDICTION AND VENUE

25 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.
26 §§ 1331, 1345 and 1367, 42 U.S.C. §§ 9607 and 9613(b) and 33 U.S.C. § 2717(b). The Court has
27 personal jurisdiction over the Parties. Solely for the purposes of this Decree and the underlying
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1 Complaint, the Parties waive all objections and defenses that they may have to jurisdiction of the
2 Court or to venue in this District. The Parties may not challenge the terms of this Decree or this
3 Court's jurisdiction to enter and enforce this Decree.

4 IV. PARTIES BOUND

5 2. This Decree is binding upon the United States, the State, the Puyallup Tribe of
6 Indians, the Muckleshoot Indian Tribe and upon Defendant and their heirs, successors and assigns.
7 Any change in ownership or corporate or other legal status, including but not limited to any transfer
8 of assets or real or personal property, will in no way alter the status or responsibilities of Defendant
9 under this Decree.

10 V. DEFINITIONS

11 3. Unless otherwise expressly provided, terms used in this Decree that are defined in
12 CERCLA or in regulations promulgated under CERCLA have the meanings assigned to them in
13 CERCLA or in such regulations. Whenever the terms listed below are used in this Decree or in any
14 attached appendix, the following definitions will apply:

15 a. "Commencement Bay Environment" means the waters of Commencement
16 Bay, State of Washington -- including the shoreline, intertidal areas, tributaries, drainage areas,
17 estuaries and bottom sediments -- lying south of a line drawn from Point Defiance to Dash Point.
18 These waters include the Thea Foss Waterway, Wheeler-Osgood Waterway, Middle Waterway, St.
19 Paul Waterway, Puyallup River from the mouth south to the present City limits, Milwaukee
20 Waterway, Sitcum Waterway, Blair Waterway, and Hylebos Waterway. This area includes but is
21 not limited to the Commencement Bay Nearshore/Tideflats Superfund Site, as identified or amended
22 by the EPA, including the B&L Landfill, and areas affected by releases of hazardous substances
23 within the Commencement Bay Nearshore/Tideflats Superfund Site.

24 b. "Commencement Bay Restoration Account" means the Commencement Bay
25 Natural Resource Restoration Account authorized by the Order Directing the Deposit of Natural
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1 Resource Damages into the Registry of the Court in United States v. Port of Tacoma, No.
2 C93-5462B (W.D. Wash. Oct. 8, 1993) (attached as Appendix A).

3 c. "DSAYs" means discounted ecological service acre-years, the metric
4 established by the Trustees to determine the scale of Natural Resource Damages liability associated
5 with the Hylebos Waterway and the natural resource restoration efforts needed to compensate for
6 injury to, destruction or loss of natural resources giving rise to liability.

7 d. "Defendant" means Glacier Northwest, Inc.

8 e. "Natural Resource Damages" means damages, including costs of damage
9 assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; Chapter 70.105D RCW;
10 Section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; and Section 1002(b)(2)(A) of the Oil
11 Pollution Act of 1990 (OPA), 33 U.S.C. § 2702(b)(2)(A), for injury to, destruction of, or loss of
12 natural resources resulting from releases of hazardous substances or discharges of oil to the
13 Commencement Bay Environment at or from sites along, adjacent to or draining to the Hylebos
14 Waterway.

15 f. "Parties" mean the United States, the State of Washington, the Puyallup Tribe
16 of Indians, the Muckleshoot Indian Tribe and Glacier Northwest, Inc.

17 g. "Plaintiffs" mean the United States, the State, the Puyallup Tribe of Indians,
18 and the Muckleshoot Indian Tribe.

19 h. "Trustees" mean the United States Department of Commerce, acting through
20 NOAA; the Department of the Interior; the Washington State Department of Ecology, on behalf of
21 the State of Washington; the Puyallup Tribe of Indians; and the Muckleshoot Indian Tribe.

22 VI. GENERAL PROVISIONS

23 4. The Complaint states claims upon which relief may be granted.

24 5. Nothing in this Consent Decree shall be construed as an admission of liability by the
25 Defendant for any claims or allegations made in the Complaint or in this Consent Decree.
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1 6. This Consent Decree shall not be used as evidence against any Party in any action or
2 proceeding other than an action or proceeding to enforce the terms of this Consent Decree.

3 VII. PAYMENT OF NATURAL RESOURCE DAMAGES

4 AND DAMAGE ASSESSMENT COSTS

5 7. Within 30 days of entry of this Decree, Defendant will pay to the Trustees
6 \$187,512.00 for Natural Resource Damages. This payment will be made by a certified check made
7 payable to the Clerk of the Court. This check will be deposited in the Commencement Bay Natural
8 Resource Restoration Account.

9 8. Within 30 days of entry of this Decree, Defendant will pay to the Trustees sums
10 totaling \$20,804.24 in damage assessment costs. These sums shall be paid in the following amounts
11 and particulars:

12
13 Trustee: National Oceanic and Atmospheric Administration
14 Amount: \$16,782.75

15 Trustee: U.S. Department of the Interior
16 Amount: \$2,805.84

17 Payments to NOAA and the U.S. Department of the Interior shall be made by FedWire Electronic
18 Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT
19 procedures. Payment shall be made in accordance with instructions provided to Defendant by the
20 Financial Litigation Unit of the U.S. Attorney's Office of the Western District of Washington. Any
21 payments received by the Department of Justice after 4:00 p.m. Eastern Standard Time shall be
22 credited on the next business day. Defendant shall provide at least five days notice to the Financial
23 Litigation Unit before making the transfer.

24 Payments to the other Trustees shall be made by certified checks, bearing the notation
25 "Glacier Northwest, Inc. - Commencement Bay Assessment Costs," in the amounts indicated and
26 made payable and addressed as follows:

1 Trustee: State of Washington
2 Amount: \$346.22
3 Payee: State of Washington/Department of Ecology
4 Address: State of Washington
5 Department of Ecology
6 Attention: Cashiering Section
7 P.O. Box 5128
8 Lacey, WA 98503-0210

7 Trustee: Puyallup Tribe of Indians
8 Amount: \$792.09
9 Payee: Puyallup Tribe of Indians
10 Address: Mr. William Sullivan
11 Environmental Protection Department
12 Puyallup Tribe of Indians
13 2002 E. 28th Street
14 Tacoma, WA 98404

13 Trustee: Muckleshoot Indian Tribe
14 Amount: \$77.34
15 Payee: Muckleshoot Indian Tribe
16 Address: Mr. Rob Otsea
17 Office of the Tribal Attorney
18 Muckleshoot Indian Tribe
19 39015 172nd Avenue S.E.
20 Auburn, WA 98002

18 9. At the time of each payment Defendant will send notice that payment has been made
19 to the Trustees and DOJ in accordance with Section XIV (Notices and Submissions). Such notice
20 will reference Commencement Bay NRDA, DOJ case number 90-11-2-1049, and the civil action
21 number.

22 VIII. FAILURE TO COMPLY WITH CONSENT DECREE

23 10. Interest on Late Payments. If Defendant fails to make any payment under
24 Paragraphs 7 and 8 by the required due date, interest shall be assessed at the rate specified for interest
25 on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507,
26 compounded annually on October 1 of each year in accordance with 42 U.S.C. § 9607(a). The
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1 applicable rate of interest is the rate in effect at the time the interest accrues. The rate of interest is
2 subject to change on October 1 of each year. Interest will continue to accrue on the unpaid balance
3 through the date of payment.

4 11. Stipulated Penalties.

5 a. If any amounts due under Paragraphs 7 and 8 are not paid by the required date,
6 Defendant will be in violation of this Decree and, as a stipulated penalty, in addition to the interest
7 required by Paragraph 10, will increase the financial contributions it makes under this Consent
8 Decree to fund habitat restoration actions by paying the Trustees \$1,000 per violation per week that
9 such payment is late. After the second week that such payment is late, the stipulated penalty shall
10 apply to each additional day that the payment is late.

11 b. Stipulated penalties are due and payable within 30 days of the date of the
12 demand for payment of the penalties by the Trustees. All payments to the Trustees under this
13 Paragraph will be made by a certified check made payable to the Clerk of the Court. This check will
14 be deposited in the Commencement Bay Restoration Account.

15 c. At the time of each payment, Defendant will send notice that payment has
16 been made to the Trustees and DOJ in accordance with Section XIV (Notices and Submissions).
17 This notice will reference Commencement Bay NRDA, DOJ Case Number 90-11-2-1049, and the
18 civil action number.

19 d. Penalties will accrue as provided in this Paragraph regardless of whether the
20 Trustees have notified Defendant of the violation or made a demand for payment, but the penalties
21 need only be paid upon demand. All penalties will begin to accrue on the day after payment is due
22 and will continue to accrue through the date of payment. Nothing in this Decree prevents the
23 simultaneous accrual of separate penalties for separate violations of this Decree.

24 12. If Plaintiffs bring an action to enforce this Decree, Defendant will reimburse Plaintiffs
25 for all costs of such action, including but not limited to costs of attorney time.

1 13. Payments made under this Section are in addition to any other remedies or sanctions
2 available to Plaintiffs by virtue of Defendant's failure to comply with the requirements of this
3 Decree.

4 14. Notwithstanding any other provision of this Section, Plaintiffs may, in their
5 unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued
6 pursuant to this Decree. Payment of stipulated penalties does not excuse Defendant from payment
7 as required by Section VII or from performance of any other requirement of this Consent Decree.

8 15. The Trustees may use sums paid as stipulated penalties under Paragraph 11 to pay
9 unreimbursed damage assessment costs and/or to fund or contribute to additional actions to restore
10 Commencement Bay natural resources.

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12 IX. COVENANT NOT TO SUE BY PLAINTIFFS

13 16. Except as specifically provided in Section X (Reservations of Rights) below,
14 Plaintiffs covenant not to sue or to take administrative action against Defendant pursuant to Section
15 107(a) of CERCLA, 42 U.S.C. § 9607(a); Chapter 70.105D RCW; Section 311 of the Clean Water
16 Act (CWA), 33 U.S.C. § 1321; or Section 1002(a) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C.
17 § 2702(a), to recover Natural Resource Damages. This covenant not to sue will take effect upon
18 receipt by the Registry of the Court and by each of the Trustees of all payments required by
19 Paragraphs 7 and 8 of Section VII. This covenant not to sue is conditioned upon the satisfactory
20 performance by Defendant of its obligations under this Decree. This covenant not to sue extends
21 only to Defendant and its heirs, successors, and assigns, and does not extend to any other person.

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23 X. RESERVATIONS OF RIGHTS

24 17. Plaintiffs reserve, and this Decree is without prejudice to, all rights against Defendant
25 with respect to all matters not expressly included within the Covenant Not to Sue by Plaintiffs in
26 Paragraph 16. Notwithstanding any other provision of this Decree, Plaintiffs reserve, and this Decree
27 is without prejudice to, all rights against Defendant with respect to:
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- 1 a. liability for failure of Defendant to meet a requirement of this Decree;
2 b. liability for costs of response incurred or to be incurred by Plaintiffs;
3 c. liability for injunctive relief or administrative order enforcement under Section 106 of
4 CERCLA, 42 U.S.C. § 9606, and
5 d. criminal liability to the United States or State.

6 **XI. REOPENERS**

7 18. Notwithstanding any other provision of this Consent Decree, the Plaintiffs reserve,
8 and this Consent Decree is without prejudice to, the right to institute proceedings against Defendant
9 in this action or in a new action for:

10 a. Claims based on a failure of Defendant to satisfy the requirements of this Consent
11 Decree; and

12 b. Additional claims for Natural Resource Damages if conditions, factors or information
13 in the Commencement Bay Environment, not known to the Trustees at the time of entry of this
14 Consent Decree, are discovered that, together with any other relevant information, indicates that
15 there is injury to, destruction of, or loss of natural resources of a type unknown, or of a magnitude
16 significantly greater than was known, at the time of entry of this Consent Decree, which is
17 attributable to the Defendant.
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19 **XII. COVENANT NOT TO SUE BY DEFENDANT**

20 19. Defendant covenants not to sue and agrees not to assert any claims or causes of action
21 against the United States, the State, the Puyallup Tribe of Indians and the Muckleshoot Indian Tribe
22 or their contractors or employees, for any civil claims or causes of action relating to Natural
23 Resource Damages.
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25 **XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

26 20. Nothing in this Consent Decree shall be construed to create any rights in, or grant any
27 cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly
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1 reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims,
2 demands, and causes of action they each may have with respect to any matter, transaction, or
3 occurrence relating in any way to the Commencement Bay Environment against any person not a
4 Party hereto.

5 21. The Parties agree, and by entering this Consent Decree this Court finds, that
6 Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution
7 actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and RCW
8 70.105D.040(4)(d) for Natural Resource Damages.

9 22. Defendant agrees that it will notify the Trustees and the United States in writing no
10 later than 60 days before bringing a suit or claim for contribution for Natural Resource Damages.
11 Defendant also agrees that it will notify the Trustees and the United States in writing within 10 days
12 of service of a complaint or claim upon Defendant relating to a suit or claim for contribution for
13 Natural Resource Damages. In addition, Defendant will notify the Trustees and the United States
14 within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of
15 receipt of any order from a court setting a case for trial for matters related to this Decree.

16 23. In any subsequent administrative or judicial proceeding initiated by the Plaintiffs for
17 injunctive relief, recovery of response costs, or other appropriate relief other than Natural Resource
18 Damages, Defendant shall not assert, and may not maintain, any defense or claim based upon the
19 principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other
20 defenses based upon any contention that the claims raised by the Plaintiffs in the subsequent
21 proceeding were or should have been brought in the instant case; provided, however, that nothing
22 in this Paragraph affects the enforceability of the covenants not to sue set forth in Paragraphs 16 and
23 19.

24 XIV. NOTICES AND SUBMISSIONS

25 24. Whenever notice is required to be given or a document is required to be sent by one
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1 Party to another under the terms of this Decree, it will be directed to the individuals at the addresses
2 specified below, unless those individuals or their successors give notice of a change to the other
3 Parties in writing. Written notice as specified constitutes complete satisfaction of any written notice
4 requirement of the Decree for Plaintiffs and Defendant.

5 As to the United States and as to DOJ:

6 Chief, Environmental Enforcement Section
7 Environment and Natural Resources Division
8 U.S. Department of Justice
9 P.O. Box 7611
10 Washington, D.C. 20044-7611
(DJ # 90-11-2-1049)

11 As to NOAA:

12 Robert A. Taylor
13 NOAA Office of General Counsel GCNR/NW
14 7600 Sand Point Way NE
15 Seattle, WA 98115-0070

16 As to the United States Department of the Interior:

17 Jeff Krausmann
18 U.S. Fish & Wildlife Service
19 510 Desmond Dr. SE, Suite 102
Lacey, WA 98503-1263

20 As to the State:

21 Craig Thompson
22 Toxics Cleanup Program
23 State of Washington
24 P.O. Box 47600
Olympia, WA 98504-7600

25 As to the Puyallup Tribe of Indians:

26 Bill Sullivan
27 Environmental Department

1 Puyallup Tribe of Indians
2 1850 Alexander Avenue
3 Tacoma, WA 98421

4 As to the Muckleshoot Indian Tribe:

5 Mr. Rob Otsea
6 Office of the Tribal Attorney
7 Muckleshoot Indian Tribe
8 39015 172nd Avenue S.E.
9 Auburn, WA 98002

10 As to Defendant:

11 Scott Isaacson
12 Vice President & General Counsel
13 Glacier Northwest, Inc.
14 P.O. Box 1730
15 Seattle, WA 98111

16 **XV. EFFECTIVE DATE**

17 25. The effective date of this Consent Decree shall be the date upon which this
18 Consent Decree is entered by the Court, except as otherwise provided herein.

19 **XVI. RETENTION OF JURISDICTION**

20 26. This Court will retain jurisdiction over this matter for the purpose of interpreting
21 and enforcing the terms of this Decree.

22 **XVII. INTEGRATION/APPENDICES**

23 27. This Decree and its appendices constitute the final, complete, and exclusive
24 agreement and understanding with respect to the settlement embodied in this Decree. The Parties
25 acknowledge that there are no representations, agreements, or understandings relating to the
26 settlement other than those expressly contained in this Decree. The following appendices are
27 attached to and incorporated into this Consent Decree:

28 Appendix A is the Order Directing the Deposit of Natural Resource Damages into the

1 Registry of the Court in United States v. Port of Tacoma, No. C93-5462B (W.D. Wash. Oct. 8,
2 1993).

3 XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

4 28. This Decree will be lodged with the Court for a period of not less than 30 days for
5 public notice and comment. The Plaintiffs each reserve the right to withdraw or withhold their
6 consent if the comments regarding the Decree disclose facts or considerations that indicate this
7 Decree is inappropriate, improper, or inadequate. Defendant consents to the entry of this Decree
8 without further notice.
9

10 29. If for any reason this Court declines to approve this Decree in the form presented,
11 this agreement may be voided at the sole discretion of any Party, and the terms of the agreement
12 may not be used as evidence in any litigation between the Parties.

13 XIX. SIGNATORIES/SERVICE

14 30. The Assistant Attorney General for the Environment and Natural Resources
15 Division of the United States Department of Justice and each undersigned representative of the
16 State, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe and Defendant certifies that
17 he or she is authorized to enter into the terms and conditions of this Decree and to execute and
18 bind legally the Party that he or she represents to this document.

19 31. Defendant agrees not to oppose entry of this Decree by this Court or to challenge
20 any provision of this Decree unless any Plaintiff has notified Defendant in writing that it no
21 longer supports entry of the Decree.
22

23 32. Defendant will identify on the attached signature page the name and address of an
24 agent who is authorized to accept service of process by mail on behalf of it with respect to all
25 matters relating to this Decree. Defendant agrees to accept service in that manner and to waive
26 the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and
27 any applicable local rules of this Court, including but not limited to service of a summons.
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.
2 Glacier Northwest, Inc.

3 FOR THE UNITED STATES OF AMERICA

4
5 Date: 12-6-06

Sue Ellen Wooldridge
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

10 FOR THE STATE OF WASHINGTON

11
12 Date: _____

13
14 Date : _____

Assistant Attorney General
State of Washington

17
18 FOR THE PUYALLUP TRIBE OF INDIANS

19
20 Date: _____

21
22
23 FOR THE MUCKLESHOOT INDIAN TRIBE

24
25 Date: _____

26
27
28
CONSENT DECREE - Page 20

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.
2 Glacier Northwest, Inc.

3 FOR THE UNITED STATES OF AMERICA

4
5 Date: _____

6 Sue Ellen Wooldridge
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
Washington, D.C. 20530

10 FOR THE STATE OF WASHINGTON

11
12 Date: 5/10/06

13 _____

14 Date: 9/16/06

15 _____
16 Assistant Attorney General
17 State of Washington

18 FOR THE PUYALLUP TRIBE OF INDIANS

19
20 Date: _____

21 _____

22
23 FOR THE MUCKLESHOOT INDIAN TRIBE

24
25 Date: _____

26 _____

27
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.
2 Glacier Northwest, Inc.

3 FOR THE UNITED STATES OF AMERICA

4
5 Date: _____

6 Sue Ellen Wooldridge
7 Assistant Attorney General
8 Environment and Natural Resources Division
9 U.S. Department of Justice
Washington, D.C. 20530

10 FOR THE STATE OF WASHINGTON

11
12 Date: _____

13
14 Date : _____

15
16 Assistant Attorney General
17 State of Washington

18 FOR THE PUYALLUP TRIBE OF INDIANS

19
20 Date: 6/8/06 _____

21
22
23 FOR THE MUCKLESHOOT INDIAN TRIBE

24
25 Date: _____

26
27
28

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in United States, et al. v.
2 Glacier Northwest, Inc.

3 FOR THE UNITED STATES OF AMERICA

4
5 Date: _____

Sue Ellen Wooldridge
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

10 FOR THE STATE OF WASHINGTON

11
12 Date: _____

13
14 Date : _____

Assistant Attorney General
State of Washington

18 FOR THE PUYALLUP TRIBE OF INDIANS

19
20 Date: _____

21
22
23 FOR THE MUCKLESHOOT INDIAN TRIBE

24
25 Date: 5-17-06

26
27
28
CONSENT DECREE - Page 20

U.S. Department of Justice
NOAA GC - DOJ DARC
7600 Sand Point Way NE
Seattle, WA 98115-0070
(206) 526-6604

1 FOR GLACIER NORTHWEST, INC.

2
3 Date: April 4, 2006

4 Scott P. Isaacson
5 Vice President
6 Glacier Northwest, Inc.

7 Agent authorized to receive service of process by mail on behalf of Glacier Northwest, Inc. with
8 respect to all matters relating to this Decree:

9 Assist Inc.
10 1700 Seventh Avenue
11 Suite 2200
12 Seattle, WA 98101
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